IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO.6 OF 2006

State of Goa, through Chief Secretary
and another. ..... Appellants.

V/s.

C.M. Abdul Khadar, represented by
his Power of Attorney. ..... Respondent.

Shri Guru Shirodkar, Addl. Govt. Advocate for the appellants.

CORAM : R.M.S. KHANDEPARKAR, J.

DATE : 19TH JANUARY, 2006.

P.C.

Heard. The appellants challenge the order passed by the Addl. District Judge, Panaji rejecting the application filed by the appellants under Order VII, Rule 11 (d) of C.P.C. for rejection of the plaint. The said application was filed on the ground that on the face of the plaint, the suit is barred by Law of Limitation.

2. It is the contention on behalf of the appellants that the amount which is sought to be recovered relates to the extra work carried out by the contractor-plaintiff and that the work in that regard was completed on 17.1.2001. There was also a dispute about the exact measurement of the work carried out and the amount payable in

relation to such extra work and that the plaintiff-respondent did not file the suit within three years from 17.1.2001 and, therefore, the application for rejection of the plaint was filed.

3. The trial Court, however, has held that the period of limitation cannot be decided by merely considering the pleadings in the plaint and in the facts and circumstances of the case, it requires the evidence to be led by the parties on the issue of bar of limitation and, therefore, has rejected the application filed by the appellants.

4. A bare reading of Order VII, Rule 11(d) would disclose that the question of rejection of plaint in exercise of powers under such statutory provision can arise only when either the pleadings in the plaint or the annexures thereto ex facie disclose that the suit has been filed beyond the period of limitation from the date of cause of action for filing the suit. In the case in hand, paragraph 28 of the plaint reads thus :

> " The Plaintiff states that the cause of action for filing the suit arose on the expiry of the period mentioned in the notice dated 8.9.2003, (Annexure -S) served upon the Defendants. The Plaintiff further states that though on completion of the works the Plaintiff has a right to get payment, as final bill has not been prepared by the Defendant No.2, the cause of action continues till the entire amount along with interest is paid."

The reply to the said pleadings in paragraph 28 is to be found in para 29 of the written statement and the same reads as under :

> "With reference to para 28 of the plaint under reply, these defendants submit that no cause of action has arisen in favour of the Plaintiff to file the present suit and therefore, the suit of the plaintiff is liable to be rejected with costs. "

5. Apparently, the plea raised by the plaintiff-respondent, that the final bill was not prepared by the defendants and, therefore, the cause of action would continue till preparation of such final bill in relation to the works carried out by the plaintiff-respondent, has not been challenged nor denied. Even, otherwise, when the work is entrusted by the Government to a contractor on acceptance of his tender, certainly, the cause of action to claim the money for the work carried out would arise only after issuance of final bill in the matter which should be preceded by taking joint measurements of the work carried out and finalisation of the calculations regarding the dues and the question of cause of action for the contractor to demand the money prior thereto cannot arise. Needless to say, this would not prohibit the contractor claiming money regarding the work carried out in parts even before the issuance of final bill in case the tender documents or the agreement between the parties permits to do so.

5. Since the plaint on the face of it discloses that the cause of action was continuing on account of failure on the part of the Authorities to issue final bill and there were no pleadings available before the trial Court in the plaint or in the form of annexures to the plaint so as exercise its power under Order VII, Rule 11(d) of C.P.C., the rejection of the application filed by the appellants in the case in hand cannot be found fault with. Even, otherwise, considering the arguments canvassed on behalf of the appellants, as rightly observed by the trial Court, the issue of limitation in the case in hand cannot be decided by merely considering the pleadings in the plaint. Whether the work carried out is beyond the work which was allowed in terms of the tender documents or not and whether the work carried out is in terms of the requirement of the appellants-defendants, are not the questions to be decided on the basis of the pleadings in the plaint. They do require the parties to lead evidence on those issues. Considering the contention sought to be raised on behalf of the appellants, the issue of limitation in the case in hand cannot be said to be even a preliminary issue. It will have to be decided by leading evidence by the parties.

6. The decision in the case of **The State of Maharashtra vs. M/s. Sadiq & Company,** (1993 (1) Current Civil Cases 529) has no application to the facts of the case in hand. Even, otherwise, in the said case the observations regarding the right to sue having accrued

when the firm had completed the extra item of work was made in the facts of the case wherein the final bill was already prepared and paid. In that case, the extra work was carried out after preparation and payment of the final bill. The facts in the said case are totally different from the facts of the case in hand.

7. For the aforesaid reasons, there is no case made out for entertaining the appeal. The appeal is, therefore, summarily dismissed.

R.M.S. KHANDEPRKAR, J.

ssm.